

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

15-CR-877 (PAE)

-v-

EDWIN LEON,

ORDER

Defendant.

PAUL A. ENGELMAYER, District Judge:

The Court has received an application on behalf of defendant Edwin Leon seeking his compassionate release from Federal Correctional Institution (“FCI”) Fort Dix pursuant to 18 U.S.C. § 3582(c), in light of the risk that the COVID-19 pandemic presents for inmates. *See* Dkts. 315 at 4 (“Def. Ltr.”), 318 (“Def. Mem.”).

On May 3, 2017, following Leon’s guilty plea to one count of conspiracy to commit Hobbs Act robbery, the Court sentenced Leon to 84 months’ imprisonment. *See* Dkt. 225 (“Sent. Tr.”) at 2, 31. He has been in custody since his arrest in March 2016 and has served approximately 50 months of his sentence. *See* Dkt. 319 (“Gov’t Mem.”) at 3. The Government and Leon agree that Leon’s projected release date is March 2022. *See id.*; Def. Mem., Ex. A at 1. Leon will also eligible to move to a halfway house as soon as September 2021. Def. Mem. at 1.

On May 9, 2020, Leon filed an email request for compassionate release, based on his asthma, with the warden of FCI Fort Dix. *See* Def. Mem., Ex. A. On May 19, 2020, the warden denied Leon’s request. *See id.*, Ex. B. Since that time, the 30-day time period for administrative review by the Bureau of Prisons (“BOP”) of Leon’s application has expired. On May 26, 2020, the Court received a letter from Christine Leon, of behalf of her son, defendant Leon, seeking

Leon's release in light of the COVID-19 pandemic. *See* Def. Ltr. The Court directed Leon's trial counsel to file a letter in support of that application and that the Government thereafter submit a letter setting forth its position. Dkt. 315 at 1. On June 4, 2020, Leon's counsel filed a memorandum in support. *See* Def. Mem. On June 5, 2020, the Government filed its response. *See* Gov't Mem.

Leon asks the Court to "grant him compassionate release, a sentencing reduction, or order that he serve the remainder of his sentence in home confinement." Def. Mem. at 1. Leon, who is 34 years old, argues he should be released because of the risk COVID-19 poses to him. *See id.* Specifically, he suffers from bronchial asthma and, as a result, was placed a list of FCI Fort Dix inmates who were at high risk if they contracted COVID-19. *Id.* The Government opposes Leon's early release. *See* Gov't Mem. at 1. It argues that Leon's motion should be denied because Leon is a danger to the community, and the 18 U.S.C. § 3553(a) factors do not support his release. *Id.*

Under 18 U.S.C. § 3582(c)(1)(A), "upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf," a court may reduce such defendant's sentence if it finds that "extraordinary and compelling circumstances warrant such a reduction," and that "such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(i). The Court must also consider the "factors set forth in section 3553(a) to the extent that they are applicable." *Id.* § 3582(c)(1)(A).

Congress tasked the Sentencing Commission with identifying the circumstances that are sufficiently extraordinary and compelling to justify a reduction in sentence. *United States v. Ebbers*, 432 F. Supp. 3d 421, No. (S4) 02 Cr. 1144-3 (VEC), 2020 WL 91399, at *4

(S.D.N.Y. Jan. 8, 2020) (quoting 28 U.S.C. § 994(t)). Relevant here, the Commission’s policy statement and its corresponding commentary on § 3582(a)(1)(A) state that a court may reduce a sentence for “extraordinary and compelling reasons,” including where the defendant is “suffering from a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.”¹ U.S.S.G. § 1B1.13(1)(A) & cmt. n.1(A). The defendant must also not be a danger to the community and the reduction must be consistent with the Commission’s policy statement. *Id.* § 1B1.13(2)–(3).

The first of these factors leans in favor of Leon’s early release. The COVID-19 pandemic is extraordinary and unprecedented in modern times in this nation. It presents a clear and present danger to free society for reasons that need no elaboration. COVID-19 presents a heightened risk for incarcerated defendants like Leon with respiratory conditions. The Centers for Disease Control warns that persons with asthma² are at elevated risk of serious illness if they contract the disease. Further, the crowded nature of federal detention centers present an outsize

¹ U.S.S.G. § 1B1.13(1)(A) references only “a motion of the Director of the Bureau of Prisons” because it has not yet been updated to reflect the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, which allows defendants independently to seek compassionate release relief from federal courts. *Ebbers*, 2020 WL 91399, at *1, 4.

² See *People with Moderate to Severe Asthma*, Ctrs. for Disease Control and Prevention (Mar. 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html>.

risk that the COVID-19 contagion, once it gains entry, will spread.³ And, realistically, a high-risk inmate who contracts the virus while in prison will face challenges in caring for himself. For these reasons, in the past months, numerous courts, including this one, have ordered the temporary release of inmates held in pretrial or presentencing custody⁴ and, in more limited instances, the compassionate release of high-risk inmates serving federal sentences.⁵ At the same time, while Leon's asthma undoubtedly presents risks related to COVID-19, the Court

³ See Timothy Williams, et al., '*Jails Are Petri Dishes*': *Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020, updated May 20, 2020), <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>; see also *United States v. Nkanga*, No. 18 Cr. 713 (JMF), 2020 WL 1529535, at *1 (S.D.N.Y. Mar. 31, 2020) (citing *Interim Guidance on Mgmt. of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Ctrs. for Disease Control and Prevention 2 (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>) (highlighting danger faced by those in jails and prisons).

⁴ See, e.g., *United States v. Chandler*, --- F. Supp. 3d ---, No. 19 Cr. 867 (PAC), 2020 WL 1528120, at *1–3 (S.D.N.Y. Mar. 31, 2020) (granting bail application, pursuant to 18 U.S.C. § 3142(i), of defendant charged with being a felon in possession of a firearm); *United States v. McKenzie*, --- F. Supp. 3d ---, No. 18 Cr. 834 (PAE), 2020 WL 1503669, at *2–3 (S.D.N.Y. Mar. 30, 2020) (granting bond pending sentencing, pursuant to 18 U.S.C. § 3145(c), to defendant who had pleaded guilty to single count of assault with a deadly weapon and had previously been released on bond); *United States v. Witter*, No. 19 Cr. 568 (SHS), Dkt. 40 at 2–3 (S.D.N.Y. Mar. 26, 2020) (granting bond pending sentencing, pursuant to § 3145(c), to defendant who had pleaded to a narcotics offense); cf. *United States v. Stephens*, --- F. Supp. 3d ---, No. 15 Cr. 95, 2020 WL 1295155 (AJN), at *3 (S.D.N.Y. Mar. 19, 2020) (granting defendant's request for reconsideration of bail conditions and releasing him to home confinement, while noting that, in the alternative, § 3142(i) would necessitate his temporary release).

⁵ See, e.g., *United States v. Jasper*, No. 18 Cr. 390 (PAE), Dkt. 441 (S.D.N.Y. April 6, 2020) (ordering compassionate release of defendant with an immune-inflammatory disease who had served all but 34 days of a four-month sentence).

notes that he is young and does not have other health conditions that compound that risk.⁶ In addition, FCI Fort Dix currently has no active cases of COVID-19. Gov’t Mem. at 3.

The Court, however, cannot find that Leon “is not a danger to the safety of any other person or to the community,” U.S.S.G. § 1B1.13(2), as is required for compassionate release. Leon’s conduct in this case gravely endangered public safety. He participated actively in six acts of robbery and violence—each a separate home invasion—spanning late 2014 to early 2016. *See* Sent. Tr. at 18–22. These acts were motivated by a desire to steal money and drugs, reflected an appetite for and a repeated willingness to use violence, and victimized numerous victims. *Id.* at 22. Leon engaged in such conduct notwithstanding a prior criminal record, including narcotics, weapons, and disorderly conduct convictions. *Id.* at 24. For these reasons, at sentencing, the Court rejected Leon’s request for a 60-month sentence, explicitly out of concern for the interests in public protection and specific deterrence, and found a sentence well above 60 months required. *Id.* at 25, 31. Having so found, the Court cannot today find that the 50-month sentence that Leon now effectively seeks is compatible with public safety.

Independently, the Court further cannot find that the application of the § 3553(a) factors favors Leon’s release after service of approximately 60% of his announced sentence. To be sure, one § 3553(a) factor weighs more heavily in Leon’s favor today than at the time of sentencing: “the need to provide the defendant with needed . . . medical care.” 18 U.S.C. § 3553(a). This

⁶ See, e.g., *United States v. Hernandez*, No. 19 Cr. 169 (VM), 2020 WL 1503106, at *1 (S.D.N.Y. Mar. 30, 2020) (same for 64-year-old defendant with asthma and high blood pressure that placed him “at a substantially heightened risk of dangerous complications should he contract COVID-19”); *United States v. Perez*, No. 19 Cr. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (granting bail application, pursuant to § 3142(i), of 65-year-old defendant with COPD, in light of “unique confluence of serious health issues and other risk factors facing this defendant, . . . which place him at a substantially heightened risk of dangerous complications should [he] contract COVID-19”).

factor favors a shorter sentence than imposed given the risk that the COVID-19 pandemic presents to Leon as an asthmatic.⁷ But the Court cannot comfortably find that a sentence reduction on the order that Leon seeks would result in a sentence commensurate with the interest in just punishment in light of the gravity of his crimes, the interest in public protection, or the interest in specific deterrence. For the reasons discussed in detail at Leon's sentencing, a sentence in the range of 84 months' imprisonment was necessary to achieve those goals, viewed in combination. Notably, the 84 months' sentence that the Court imposed reflected a significant downward variance from the advisory guideline range which was between 151 and 188 months. Sent. Tr. at 31. Converting this to a 50-month sentence, in the Court's judgment would disserve these important § 3553(a) factors.

In this respect, Leon's circumstances are distinct from those of several defendants with similar ailments whose compassionate release the Court has granted in recent months in recognition of the changed circumstances presented by COVID-19. These defendants had served a substantially greater proportion of their sentences, such that the Court found the sentence resulting from a grant of compassionate release consistent with the § 3553(a) factors. *See, e.g., United States v. Knox*, No. 15 Cr. 445 (PAE), Dkt. 1088 (S.D.N.Y. April 10, 2020) (ordering compassionate release of defendant who has served all but seven months of an 88-month sentence); *Jasper*, No. 18 Cr. 390 (PAE), Dkt. 441 (ordering compassionate release of defendant who had served all but 34 days of a four-month sentence); *United States v. Hernandez*,

⁷ This interest would also support an application by Leon for a temporary furlough from prison during some or all of the pendency of the pandemic. Whether to grant such a furlough, however, is a decision left to the unreviewable discretion of the BOP. *United States v. Roberts*, --- F. Supp. 3d ---, No. 18 Cr. 528 (JMF), 2020 WL 1700032, at *3 (S.D.N.Y. Apr. 8, 2020). The Court encourages the BOP to consider with utmost attention a furlough application in this case.

--- F. Supp. 3d ---, No. 18 Cr. 834 (PAE), 2020 WL 1684062, at *3 (S.D.N.Y. April 2, 2020) (ordering compassionate release of a defendant who had served 17 months of a 24-month sentence and was scheduled for release in four months and whom the Court not to present a danger to the public). Had Leon's application for release been made closer to his release date, this same outcome might have inhered here.

Accordingly, finding that Leon continues to pose a danger to the community and that the § 3553(a) factors considered in combination do not support a reduction of sentence, the Court denies Leon's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). This application is without prejudice to Leon's ability to seek compassionate release later in his prison term. The Clerk of Court is respectfully directed to mail a copy of this order to Leon.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: June 11, 2020
New York, New York